

**Presidential Decree No. 86/18
of 2 April 2018**

Considering that Decree No. 48/06, of 1 September 2006, establishes the Rules and Procedures for Public Tendering in the Petroleum Sector, as the necessary and mandatory process for the granting of the status of Associate of the National Concessionaire, as well as for the procurement of services and goods required for the carrying-out of petroleum operations;

Taking into account that said Decree sets a period of more than one (1) year from the beginning up to the end of the process for granting the status of Associate of the National Concessionaire;

Having the need has arisen to expedite the process for granting the status of Associate of the National Concessionaire, for it to be conducted more swiftly, so as to allow new areas to be awarded more frequently;

Further considering the objective to safeguard the public interest relating to the Petroleum Sector by means of the simplification and celerity of the procedures, and concurrently greater efficiency in petroleum production, the need has arisen to make amendments in what concerns the timelines for the conducting of the procedures, as well as to increase the limits for approval of contracts by the National Concessionaire in keeping with their respective amount;

Taking into account articles 44, 45 and 95 of Law No. 10/04, of 12 November 2004, on Petroleum Activities.

Under article 120(I) and article 125.3, both of the Constitution of the Republic of Angola, the President of the Republic hereby decrees the following:

**CHAPTER I
General Provisions**

**Article 1
(Subject)**

This Statute defines the Rules and Procedures of the Tendering for the Acquisition of the Status of Associate of the National Concessionaire, and for the Procurement of Goods and Services in the Petroleum Sector.

Article 2
(Scope of Application)

1. This Statute applies to the National Concessionaire, to all Angolan and foreign entities of proven standing and technical and financial capability which intend to associate with the National Concessionaire in order to carry out petroleum operations.
2. This Statute also applies to the entities which contract services and goods for the performance of petroleum operations.

CHAPTER II
Public Tendering for the Acquisition of the Status of Associate of the National Concessionaire

Article 3
(Associate of the National Concessionaire)

The status of Associate of the National Concessionaire shall be granted, pursuant to Articles 44.2, 44.3 and 44.4 of Law No. 10/04, of 12 November 2004, on Petroleum Activities, by public tendering or direct negotiation.

Article 4
(Requirements for Non-Operator Associate of the National Concessionaire)

1. The companies competing for Associates of the National Concessionaire shall prove their standing and financial capability, by means of submission of the following information:
 - (a) Their trade name or corporate name;
 - (b) The place of incorporation, registration and address of their registered offices;
 - (c) Their main activities carried out;
 - (d) Detailed information on their asset structure, namely the value of the shareholders' equity, realizable assets and fixed assets, as well of the liabilities;
 - (e) Comfort letter from reputable banks, attesting to their financial capability;
 - (f) Annual reports on their activities, including balance sheets and accounts for the last three (3) years, or since incorporation if the investor entity has been in existence for less than three (3) years, audited by an independent audit firm of proven experience;

- (g) Detailed information on their experience in petroleum exploration and production, including details of reserves and output;
- (h) Workforce numbers and professional experience of the management staff in the field of hydrocarbons exploration and production;
- (i) Detailed information on judicial and arbitration disputes brought against them in the last five (5) years;
- (j) Detailed information on advance plans, future commitments, including work programs or risks capable of having an impact on their capacity to implement the work program to be defined for the Angolan concessions of which they may become part;
- (k) Detailed information on business activities in Angola until the date of submission of the application.

Article 5

(Requirements for Operator Associate of the National Concessionaire)

1. Without prejudice to article 4.2, the operator of a petroleum concession shall produce evidence that they possess:
 - (a) Skills and experience in the management and carrying-out of petroleum operations;
 - (b) Technical and operational capability;
 - (c) An efficient organizational structure;
 - (d) Submit information on safety, environmental protection, prevention of pollution, and of employment, integration and training of Angolan personnel.

Article 6

(Public tendering procedure program)

1. Whenever it intends to form associations with third parties in order to carry out petroleum operations, in accordance with the General Procurement Strategy (*Estratégia Geral de Licitação*) of the Republic of Angola, the National Concessionaire shall launch a public tendering procedure, obtaining the due authorization of the Ministerial Department responsible for the Petroleum Sector for this purpose.

2. With a view to diversifying foreign investment in the Angolan Petroleum Sector in areas of less risk and lower level of investment, the public tendering procedure may be limited to small- or medium-size petroleum entities, as stated in the invitation to tender.
3. For purposes of article 6.2, small or medium-size entities are understood as those which are not part of the restricted group formed by the largest worldwide petroleum entities.
4. In the interest of promoting investment by Angolan entrepreneurs in the Petroleum Sector, the public tendering procedure may also be totally or partially limited to Angolan entities, as stated in the invitation to tender.
5. An Angolan entity is understood as an entity which, individually or organized as a company, is legally and duly incorporated and in existence in Angola, is actually headquartered in national territory, and which is wholly owned by Angolan citizens or in which Angolan citizens or Angolan entities hold, exclusively or jointly, at least 51% of the share capital.
6. The invitation to tender shall be preceded by a notice of the intent to launch a tendering procedure, both of which shall be published in the Official Gazette, and/or in one of the most widely-read newspapers in Angola and on the National Concessionaire's website.
7. If the tendering procedure is also open to foreign entities, the invitation and the notice shall also be published in at least one worldwide international publication.
8. The notice of the intent to launch a tendering procedure shall be published at least one hundred and twenty (120) days in advance of the procedure being launched, and shall state:
 - (a) The official date on which the public tendering procedure will be launched;
 - (b) The areas put on offer;
 - (c) The scope of the public tendering procedure (open to any company or limited to Angolan and/or foreign entities, and to small-, medium- or large-size entities).
9. The public tendering procedure shall be launched simultaneously with the publication of the terms of reference, the procedural rules and the entities' qualification requirements, and the invitation to tender shall specify the following:
 - (a) The concession area;
 - (b) Terms of reference;

- (c) The time period for submission of tenders, which shall not exceed forty (40) days of the earlier of the date of publication of the invitation to tender in the Official Gazette, and/or in the newspaper most widely-read in Angola and abroad;
 - (d) The form of the contract to be entered into between the National Concessionaire and its associates;
 - (e) Whether the entities may bid individually, as a consortium, or both;
 - (f) The list of qualification requirements for the entities which intend to associate with the National Concessionaire (information and documents detailed in Articles 4 and 5 hereof), and the time period for submitting the documents relating thereto; this time period shall not exceed forty (40) days of the date of publication of the invitation to tender.
10. The terms of reference of the public tendering procedure shall be approved in advance by the Ministerial Department responsible for the Petroleum Sector, on the basis of a proposal from the National Concessionaire.
11. A template bid to be used by the tenderer entities shall be posted on the National Concessionaire's website.
12. The tenders shall be submitted as follows:
- (a) In the Portuguese language, or in another language, but in this latter case they must be accompanied by an official translation into Portuguese;
 - (b) Submitted in a closed and sealed envelope, within the time period stated in the invitation to tender, and in the form of the template disclosed at the time the procedure was launched.

Article 7
(Opening of tenders)

1. Upon expiry of the time period for submission of the documentation relating to the public tendering procedure (qualification requirements and tenders), the tenders shall be opened on the first subsequent business day, at a public session.
2. The public session shall take place before a panel, whose composition shall be approved in advance by the Ministerial Department responsible for the Petroleum Sector on the basis of a proposal from the National Concessionaire, and which shall include a representative of the National Concessionaire, who shall chair the panel, a representative appointed by the

Ministerial Department responsible for the Petroleum Sector and a representative appointed by the Ministry of Finance.

3. The panel shall check that the documentation submitted by the tenderers complies with the procedural requirements of the invitation to tender, and shall assess the tenders deemed valid.

Article 8

(Shortcomings and irregularities)

If shortcomings or irregularities are detected in the tenders submitted, the panel shall notify the parties concerned by fax, e-mail or registered letter with recorded delivery, instructing them to remedy such shortcomings or irregularities, within ten (10) days of receiving such notice, on penalty of exclusion from the tendering procedure.

Article 9

(Assessment and award)

1. The panel shall assess the tenders submitted and accepted, as well as the qualification requirements, within a maximum of forty five (45) days of the date of opening of tenders.
2. The panel's assessment shall be based on objective criteria, taking into particular account the factors stated in the Terms of Reference.
3. Upon making the assessment, the panel shall submit, on the first subsequent business day, the respective results and its proposal for award for the approval of the National Concessionaire; the National Concessionaire shall, within a maximum of ten (10) days of the date of submission, approve the results and submit [them] to the Ministerial Department responsible for the Petroleum Sector for review and approval.
4. All tenderers shall be officially notified of the award, and such award shall be disclosed by means of a notice published in the Official Gazette, and/or in one of the most widely-read newspapers in Angola, in an international publication (if applicable) and on the Concessionaire's website, within a maximum of twenty (20) days of the end of the time period for assessment of the tenders.

Article 10

(Tendering Procedure for Selection of the other Associates of the National Concessionaire)

1. If only the operator is selected in the public tendering procedure referred to in the preceding Articles, the National Concessionaire shall launch a second public tendering procedure to select its other associates.

2. Companies which tendered in the procedure for selection of the operator and which were not selected shall be invited for the second procedure, together with other companies of proven standing and financial capability, which have expressed an interest and been qualified.
3. The invitation to tender for the second procedure and its procedural rules shall comply with the provisions of Articles 6, 7, 8 and 9 of this Statute.
4. The invitation to tender shall state the terms proposed by the operator which led to it being selected in the first procedure, together with the time periods for submission of tenders.
5. The selection factor in the second public tendering procedure, to which this Article refers to, may consist of a supplementary economic contribution to the State.

Article 11

(Appeal)

1. Tenderers who consider themselves injured by the decision of the panel may appeal against it within five (5) days of the date of the public notice of the decision.
2. Appeals shall be submitted to the Ministerial Department responsible for the Petroleum Sector, which shall decide within five (5) days of the date of receiving the appeal, such decision being final.

Article 12

(Negotiations Committee)

1. Once the award decisions have been made in the tendering procedures referred to above, a Negotiations Committee shall be set up, within a maximum of five (5) days of the award of the procedure, comprising representatives of the Ministerial Department responsible for the Petroleum Sector, of the Ministry of Finance and of the National Concessionaire, which shall:
 - (a) Finalize, through negotiation with the Associates of the National Concessionaire selected, the contract to be entered into for the carrying-out of petroleum operations; this contract shall be initialed by the chairman of the Negotiations Committee and by the representative of the Associates of the National Concessionaire within a maximum of sixty five (65) days of the date of appointment of the Negotiations Committee;
 - (b) Submit to the Ministerial Department responsible for the Petroleum Sector, the Ministry of Finance and the National Concessionaire a report of each negotiation session, within eight (8) days of conclusion of the same; this report shall be forwarded

by the Ministerial Department responsible for the Petroleum Sector to the Government, for its information and to allow the Government to follow the negotiation process;

- (c) Submit to the Ministerial Department responsible for the Petroleum Sector, within a maximum of twenty (20) days of the initialing of the contract referred to in subparagraph (b) above, all the documentation required for awarding the petroleum concession, namely the negotiations report, the Draft concession Decree and the contract negotiated, in order to be submitted to the Government for approval.
2. The time periods referred to in subparagraphs 1(a) to 1(c) above may be extended by the Ministerial Department responsible for the Petroleum Sector, on the basis of a duly justified request from the Chairman of the Negotiations Committee.
3. The Chairman of the Negotiations Committee shall be appointed by the National Concessionaire.

CHAPTER III

Public Tendering for the Procurement of Services and Goods

Article 13

(General Principle)

1. Save in the case provided for in Article 15.2 of this Statute, the operator shall put out to public tender the procurement of services and goods required for the carrying-out of the petroleum operations, under the terms of the provisions below.
2. For the purposes of the preceding paragraph, the operator shall publish an invitation to tender in one of the most widely-read newspapers in Angola and on its website, itemizing the goods and services which it intends to procure, together with the conditions for tendering.
3. If the tendering procedure is also open to foreign companies, the notice shall also be posted on the operator's website.

Article 14

(Submission of Tenders)

1. The tenders shall be prepared in the Portuguese language, or in another language, but in this latter case they must be accompanied by an official translation into Portuguese.

2. The tenders shall be submitted in a closed and sealed envelope, within a maximum period of one hundred and twenty days (120), which period shall be stated in the invitation to tender.

Article 15
(Procurement Rules)

1. Whenever necessary to procure goods or services for the carrying-out of petroleum operations, and irrespective of the contract value, the operator shall comply with the principle of competition; in the case provided for in paragraph 2 below, it shall conduct a prior consultation to different entities, and in the case provided for in paragraph 5 below, it shall launch public tendering procedures under the terms defined therein.
2. Up to the amount of one million United States dollars (USD 1,000,000), or its equivalent in Angolan currency, the operator is free to sign contracts without launching tendering procedures and without the approval of the National Concessionaire, but it shall inform the National Concessionaire each quarter of the contracts entered into and of the entities involved in such contracts.
3. For contracts exceeding one million United States dollars (USD 1,000,000) and up to five million United States dollars (USD 5,000,000), or its equivalent in Angolan currency, for a period of up to five (5) years, the operator shall launch public tendering procedures, without the approval of the National Concessionaire, and is free to award the contracts without the approval of the National Concessionaire, but it shall inform the National Concessionaire each quarter of the contracts entered into of a value within the specified range and of the entities involved in such contracts.
4. In the invitation to tender the operator shall require tenderers to present the technical and financial aspects of their bids.
5. In the event of a contract with a value in excess of five million United States dollars (USD 5,000,000), or its equivalent in Angolan currency, the operator shall launch a public tendering procedure and comply with the following obligations:
 - (a) Obtain the Concessionaire's prior approval of the list of entities to tender, which shall be as comprehensive as possible, as well as of the documents and their content, to be included in the tender specifications, and the approval shall be deemed as implicitly granted within thirty (30) business days of the date of receipt of said documentation;
 - (b) Arrange for two sealed copies of the tenders to be delivered in Luanda Province, such tenders being deemed to constitute the official tenders. The operator shall give the National Concessionaire no less than seven (7) business days' notice of the time for the opening of tenders, which shall take place at the National Concessionaire's offices. In

case the National Concessionaire is unable to host the opening of tenders at its offices on the date and/or at the time proposed by the operator, it shall propose a new date and/or time; the postponement shall not however be longer than five (5) business days;

- (c) Inform the National Concessionaire of the details of the tenders received and of its assessment, including the technical and commercial specifications thereof, together with any justified alterations of the terms, scope or technical conditions deriving from these specifications. Tenders shall be clarified so as to take into account the specifications of the contract, equipment or work;
 - (d) Conduct negotiations with the potential contractors during the contract tendering and award process, and submit in writing to the National Concessionaire a detailed assessment of the tenderers' proposals, as well as a recommendation, with due grounds, of the tenderer to be selected;
 - (e) After obtaining the approval of the National Concessionaire, award and sign the contract with the "tenderer offering the lowest price", which shall be deemed to mean the tenderer whose tender accords, on all essential points, with the tender specifications and which, when analyzed from a technical and operational standpoint and subject to the same Angolan fiscal charges, results in the tender with the comparatively lowest value, after clarification and equalization;
 - (f) The real value of the tender referred to in the preceding subparagraph shall take into account the financing, when applicable and when requested by the National Concessionaire or the operator, time periods, exchange rate variations and direct losses of production revenues which may result from different work completion deadlines;
 - (g) The provisions of the law on the preference to be given to goods and services of Angolan origin shall be taken into account when determining the "tenderer offering the lowest price".
6. Unless otherwise resolved by the National Concessionaire, the operator shall have twelve (12) weeks, after the opening of the tenders submitted in the tender procedures referred to in the preceding paragraph, to conduct its analysis and to submit to the National Concessionaire its assessment of the tenderers and its recommendation.
7. The National Concessionaire shall expressly approve or reject the operator's recommendation, within a maximum period of sixty (60) days of receiving the documentation referred to in the preceding paragraph. Upon expiry of this time period, in case the National Concessionaire does not send to the operator an express approval or a

prior notice of rejection, pursuant to the following paragraph, the operator's recommendation shall be deemed as implicitly approved.

8. In case the National Concessionaire intends to withhold the approval of any contract, it shall send to the operator a prior notice of rejection, within the time period set in the preceding paragraph, detailing the grounds therefor, so as to enable the operator to make its views known. Within a maximum period of fifteen (15) days of receipt of the prior notice, the operator shall submit to the National Concessionaire all appropriate information to remedy the shortcomings of the original proposal for approval or to clarify any issues raised in the notice, so as to allow the contract to be approved. The National Concessionaire shall make a duly-grounded final decision within a maximum period of ninety (90) days of receiving the original proposal for approval. Upon expiry of this period, the operator's recommendation shall be deemed as implicitly approved.
9. There shall be no award of contract in the procedures referred to in paragraph 5 above in the following cases:
 - (a) When no proposal has been submitted;
 - (b) When all proposals have been excluded due to failure to provide the documents requested in the tendering procedure;
 - (c) When, due to unforeseen circumstances, it is necessary to amend key aspects of the tender documents after the deadline for submission of the tenders;
 - (d) When the interest of the operator imposes the postponement of the tender for a minimum period of one year;
 - (e) When, due to the occurrence of supervening circumstances, the operator no longer needs to procure the goods and/or services;
 - (f) When, with due grounds, the National Concessionaire does not approve the contract, except in cases of implicit approval or in instances where the operator deems the contract as required to maintain the stability of the operations and the integrity of the equipment, facilities and personal safety;
 - (g) When the operator fails to comply with paragraph 6 above, and does not justify its default to the National Concessionaire.
10. The decision not to award, as well as the grounds therefor, shall be notified in writing to all interested parties.

11. In the case of subparagraph 9(c) above, a new tender shall be mandatorily initiated within a maximum period of six (6) months of the date of notification of the decision of non-recommendation.
12. In the case of subparagraph 9(d) above, the operator shall set the duration of the postponement, and shall be required to initiate a new procedure at the end of such period.
13. No public tender for the procurement of services and goods for the carrying-out of petroleum operations is required, whichever the contract value, in the following cases:
 - (a) In case of an emergency in the course of the petroleum operations requiring immediate action by the operator, subject to the provision to the National Concessionaire of all information and data necessary to demonstrate the emergency and the need for immediate action;
 - (b) In situations in which, demonstrably, for technical reasons, the services and goods to be procured can only be provided or supplied by a sole vendor in the market.
14. The Ministerial Department responsible for the Petroleum Sector shall prepare and keep updated a list of Angolan entities providing services and supplying goods for petroleum operations; these entities shall be mandatorily consulted by the operators when conducting tendering procedures in connection with their activities.
15. The operator shall obtain the National Concessionaire's approval for the revision of contracts subject to paragraph 5 above, if the original value of such revision, separately or cumulatively, exceeds 10% of the original value, or if it implies a significant alteration in either the scope or the duration of the project. Such approval shall be deemed given if the operator is not notified of any objection within twenty one (21) business days of the date of receipt by the National Concessionaire of the request for approval of the revision.

CHAPTER IV

Final Provisions

Article 16

(Nullity)

Contracts for the carrying-out of petroleum operations, entered into between the Concessionaire and its associates and between the operator and the service providers and suppliers of goods, which fail to comply with the provisions of this Statute shall be null and void.

Article 17
(Tenders previously approved)

This Statute shall not impair the validity and enforceability of the public tendering procedures conducted prior to its effective date.

Article 18
(Repeal)

All legislation contrary to this Statute is hereby repealed, notably Decree No. 48/06, of 1 September 2006 Petroleum Sector.

Article 19
(Questions and omissions)

Any questions or omissions resulting from the interpretation and application of this Presidential Decree shall be resolved by the President of the Republic.

Article 20
(Effective date)

This Statute shall take effect on the date of its publication.

Discussed at the Council of Ministers, in Luanda, on 28 February 2018.

To be published.

Luanda, 20 March 2018

The President of the Republic, João Manuel Gonçalves Lourenço.